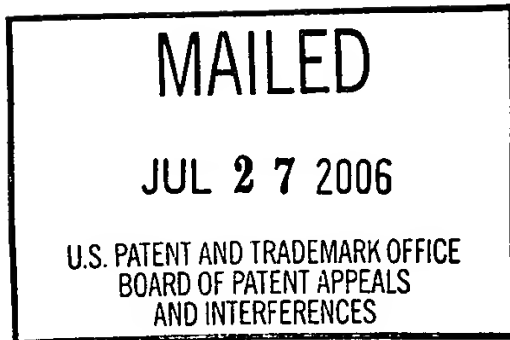


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte LLARIO A. COSLOVI and JAMES W. FORBES



Appeal No. 2006-0519
Application No. 09/650,388

ON BRIEF

Before FRANKFORT, CRAWFORD, and BAHR, Administrative Patent Judges.
CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection in Paper mailed December 13, 2004, of claims 3 to 10, 12 to 15, 18, 20, 23 to 26 and 28 to 32. Claims 33 to 46 have been allowed. Claims 1 and 2 have been cancelled and claims 11, 16, 17, 19, 21, 22 and 27 have been objected to.

BACKGROUND

The appellants' invention relates to a rail road bridge plate for spanning the gap between a pair of adjacent rail road cars (specification, p. 8). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

THE PRIOR ART REFERENCES

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Thompson	3,195,478	Jul. 20, 1965
Black, Jr. et al. (Black, Jr.)	5,782,187	Jul. 21, 1998
Petersen	5,836,028	Nov. 17, 1998

THE REJECTIONS

Claims 3 to 7, 9, 10, 13 to 15, 20, 23, 24 to 26, and 29 to 32 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Black.

Claim 8 stands rejected under 35 U.S.C. § 103 as being unpatentable over Black in view of Petersen.¹

¹ The answer also states that claim 8 is rejected as being unpatentable over Black in view of Thompson. However, as this rejection of claim 8 is not listed in either the final rejection mailed on May 17, 2004 or the non-final rejection mailed on December 13, 2004, which issued after the first filing of the brief, we assume that the listing of claim 8 as rejected over Black and Thompson is in error. We note that the rejection of claim 8 over Black in view of Peterson that was listed in the non-final rejection mailed on December 13, 2004 is not listed as a rejection in the answer, however, as the answer discusses the rejection of claim 8 over Black in view of Petersen and the appellants respond to the rejection in the brief we assume that the failure to list this rejection in the non-final rejection mailed December 13, 2004 was an oversight.

Claims 12, 18 and 28 stand rejected under 35 U.S.C. § 103 as being unpatentable over Black in view of Thompson.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (mailed July 8, 2005) for the examiner's complete reasoning in support of the rejections, and to the brief (filed May 16, 2005) and reply brief (filed September 9, 2005) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

We turn first to the examiner's rejection of claims 3 to 7, 9, 10, 13 to 15, 20, 23, 24 to 26, 29 to 32 under 35 U.S.C. § 102(b) as being anticipated by Black. We initially note that to support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

It is the examiner's view that Black describes the invention as claimed (see pages 3 to 4 of the answer).

Appellants argue that Black does not describe a bridge plate spanning the gap between the coupler ends of two rail road cars.

We do not find this argument persuasive for the following reasons.

Independent claim 3 recites, in its introductory clause:

. . . bridge plate *operable to permit* a vehicle to be conducted between respective vehicle decks of a pair of first and second longitudinally coupled rail road cars. . .

As claim 3 requires a bridge plate that is operable to permit a connection between coupled rail road cars, the claim language only requires a bridge plate that is capable of connecting two rail road cars. In addition, the recitation of a fitting “by which to mount” the beam to the first of rail road cars only requires a fitting that is capable of mounting the beam to the first of a rail road car. As such, the language of claim 3 does not positively recite two rail road cars and therefore does not require a bridge plate that is connected between two rail road cars.

In any case, Black discloses that the bridge plate 32 therein disclosed may be used to connect separably interconnected railway cars having respective trucks (col. 4, lines 28 to 29).

Appellants also argue that Black does not describe a bridge plate that is disengageable from the second rail road car as an ordinary incident of operation. Rather, according to the appellants, the bridge plate described in Black is permanently attached to the first and second rail road car units.

We do not find this argument persuasive because claim 3 does not recite that the bridge plate is disengageable as an ordinary incident of operation. Claim 3 states that the fitting permits movement of the beam to a cross-wise orientation *when* the beam is disengaged from the second rail road car. As such, claim 3 does not require that the beam is disengageable as an ordinary incident of operation and, in our view, the fitting 102, seen in Figure 8 of Black, would allow the beam or bridge plate 32 to be moved to a cross-wise orientation when the beam is disengaged, for any reason, from one of the rail road cars.

Appellants also argue that Black does not describe that the bridge plate is ever intended to be movable between a longitudinal position and a cross-wise position and that it appears that such movement would be prevented by the relative position of deck 44, platform 30, plates 32 and wear bars 110, 112, and 114.

While it is true that Black does not disclose that the bridge plate is moved to a cross-wise position, this is not required to sustain a rejection under 35 U.S.C. § 102. All that is required is that the bridge plate of Black is capable of moving to a cross-wise position. This is certainly so. In this regard, we do not agree with the appellants that the position of the bridge plate in relation to the wear bars 110, 112 and 114 would prevent such movement. Black discloses at column 10, lines 43 to 46 that the wear bars allow sliding between the deck 44, bridge plate 32 and platforms 30.

In view of the foregoing, we will sustain the examiner's rejection of claim 3 under 35 U.S.C. § 102(b) as being anticipated by Black. We will also sustain this rejection as it is directed to claims 4 to 7, 9, 10 dependent on claim 3 because the appellant has not addressed the separate patentability of these claims. We will sustain this rejection as it is directed to claims 13 to 15, 20, 23, 24 to 26 and 29 to 32 because, even though appellants discuss these claims, appellants do not advance arguments different from the arguments advanced in regard to claim 3.

We turn next to the examiner's rejection of claim 8 under 35 U.S.C. § 103 as being unpatentable over Black in view of Petersen. The examiner relies on Petersen for teaching traction bars on a ramp member. The examiner concludes:

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Black Jr et al to include the use of traction bars on the top surface of a bridge plate in his advantageous railroad car bridge plates as taught by Petersen in order to provide traction for the vehicles or load [Office Action dated December 13, 2004, page 5].

Petersen describes a ramp for loading vehicles from street or lot to an elevated subgrade (col. 2, lines 19 to 22). Traction bars 20 are provided to prevent sliding of the vehicle on the ramp (col. 1, lines 50 to 54; col. 2, lines 57 to 59).

Appellants argue that Petersen has nothing to do with the railway field and that the Office Action does not provide a motivation to combine the teachings of Black and Petersen.

We do not find the arguments of appellants persuasive. While Petersen does not relate to the railway field it does relate to the transport of vehicles as does the Black reference. In addition, we find ample motivation for providing traction bars on the bridge plate of Black so as to prevent sliding of a vehicle transported across the bridge plate. Therefore, we will sustain this rejection.

We turn next to the examiner's rejection of claims 12, 18, and 28 under 35 U.S.C. § 103 as being unpatentable over Black in view of Thompson. The examiner relies on Thompson for describing a hand grab for a bridge plate and concludes:

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Black Jr. et al to include the use of a hand grab mounted to the beam of his advantageous bridge plate as taught by Thompson'478 in order to facilitate rotation or handling of the bridge plate when the railroad cars are disconnected for service [Office Action dated December 13, 2004, pages 5 to 6].

Appellants argue that the hand grab of Thompson facilitates movement of the bridge plates between a longitudinal loading position and the vertical transit position and as such Thompson discloses movement in the opposite direction.

We agree with the examiner that Thompson would have suggested providing a hand grab for the bridge plate described in Black so as to be able to manipulate the bridge plate when necessary such as when the bridge plate is assembled or disassembled relative to the railroad cars. Therefore, we will sustain this rejection as

The decision of the examiner is affirmed.

AFFIRMED

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